

**CHAPTER 9.2 OF THE FAIRFAX COUNTY CODE
RELATING TO CABLE TELEVISION**

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**CHAPTER 9.2 OF THE FAIRFAX COUNTY CODE
RELATING TO CABLE TELEVISION**

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AN ORDINANCE to amend the Fairfax County Code by adding a new chapter numbered 9.2 and by repealing Chapter 9.1, relating generally to cable regulation and franchising.

Be it ordained by the Board of Supervisors of Fairfax County:

1. That the Fairfax County Code is amended by adding a new chapter number 9.2 as follows:

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ARTICLE 1.

General Provisions.

Section 9.2-1-1. Existing rights.

Nothing in this Chapter shall be deemed to abrogate the constitutionally protected rights of a cable system operating in the County on the date of the adoption of this ordinance.

[Formerly Sec. 9.1-1-2; new Sec. 9.2-1-1]

1 subscribers within the County, except that this definition does not include: (i) a system that
2 serves fewer than twenty subscribers; (ii) a facility that serves only to retransmit the television
3 signals of one or more television broadcast stations; (iii) a facility that serves subscribers without
4 using any public ways; (iv) a facility of a common carrier that is subject, in whole or in part, to
5 the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201, et seq., except
6 that such facility shall be considered a cable system (other than for purposes of 47 U.S.C.
7 § 541(c)) to the extent the facility is used in the transmission of video programming directly to
8 subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v)
9 an open video system that complies with 47 U.S.C. § 573; (vi) any facilities of any electric utility
10 used solely for operating its electric systems; or (vii) any portion of a system that serves fewer
11 than fifty subscribers in the County where such portion is a part of a larger system franchised in
12 an adjacent county, city or town. The foregoing definition of “cable system” does not
13 circumscribe or limit the valid authority of the County to regulate or franchise the activities of
14 any other communications system or provider of communications services to the full extent
15 permitted by law.

16 (f) *Cable Television Administrator* means the present or succeeding employee of
17 Fairfax County designated by the County as the Cable Television Administrator, who may be
18 referred to in a franchise agreement as the Communications Administrator, and who shall have
19 the duties and authority prescribed in this Chapter and otherwise prescribed by the Board.

20 (g) *County or Fairfax County* means the County of Fairfax, Virginia, excluding the
21 Towns of Clifton, Herndon, and Vienna.

22 (h) *Days* means calendar days unless otherwise specified.

1 [New in Chapter 9.2]

2 (i) *Department* means the Department of Cable and Consumer Services or any
3 successor agency.

4 [New in Chapter 9.2]

5 (j) *Equitable price* means fair market value adjusted downward for the harm to the
6 County or subscribers, if any, resulting from a Grantee's breach of its franchise agreement or
7 violation of this Chapter, and further adjusted to account for other equitable factors that may be
8 considered consistent with 47 U.S.C. § 547.

9 (k) *Fair market value* means the price which property will bring when it is offered for
10 sale by one who desires, but is not obligated, to sell it, and is bought by one who is under no
11 necessity of having it.

12 (l) *Federal Communications Commission or FCC* means that Federal agency as
13 presently constituted by the Communications Act of 1934, as amended, its designee, or any
14 successor agency.

15 (m) *Force majeure* has the meaning specified in a Grantee's franchise agreement.

16 (n) *Franchise* means a nonexclusive initial authorization, or renewal thereof, issued
17 by the County which authorizes the construction, maintenance, and operation of a cable system
18 along the public ways within a specified franchise area of the County. A franchise does not
19 include any general license or grant of permission for the privilege of transacting and carrying on
20 a business within the County that may be required by other ordinances and laws, or for attaching
21 devices to poles or structures, whether owned by the County or a private entity, or for excavating

1 or performing other work in or along public ways, unless otherwise provided in a Grantee's
2 franchise agreement.

3 (o) *Franchise agreement* means a contract entered into pursuant to this Chapter
4 between the County and a Grantee that sets forth, subject to this Chapter, the terms and
5 conditions under which a franchise will be granted and exercised.

6 (p) *Franchise area* means each of the North County, South County, or Reston
7 franchise areas of the County, with boundaries as more fully described in Section 9.2-3-3, that a
8 Grantee is authorized to serve by its franchise agreement.

9 (q) *Grantee* means a natural person, domestic or foreign corporation, partnership,
10 limited liability company, association, joint venture, or organization of any kind granted a
11 franchise to provide cable service by the Board, and any lawful successor thereto, or transferee
12 or assignee thereof.

13 (r) *Gross revenues* has the meaning assigned to it in a Grantee's franchise agreement.

14 (s) *Institutional network or I-Net* means an institutional network, as that term is
15 defined in 47 U.S.C. § 531(f), constructed for the County's use, which is not generally available
16 to the public.

17 [New in Chapter 9.2]

18 (t) *Multiple dwelling unit or MDU* means a residential building containing three or
19 more separate dwelling units located on a single lot or parcel of ground, generally with a
20 common outside entrance(s) for all the dwelling units, where "dwelling unit" means one or more

1 rooms that are arranged, designed, used, or intended for use as a complete, independent living
2 facility, including provisions for living, sleeping, eating, cooking, and sanitation.

3 [New in Chapter 9.2]

4 (u) *Normal business hours* means those hours during which most similar businesses
5 in the community are open to serve customers. In all cases, “normal business hours” must
6 include some evening hours at least one night per week and/or some weekend hours.

7 [New in Chapter 9.2]

8 (v) *Normal operating conditions* means those conditions that are within the control of
9 a Grantee, i.e., not force majeure conditions. Conditions that are within the control of a Grantee
10 include, but are not limited to, special promotions, pay-per-view events, rate increases, regular
11 peak or seasonal demand periods, and maintenance or upgrade of a Grantee’s cable system.

12 (w) *PEG* means public, educational, and governmental.

13 (x) *Person* means an individual, partnership, association, joint stock company,
14 organization, corporation, joint venture, limited liability company, or any lawful successor
15 thereto or transferee thereof, but such term does not include the County.

16 (y) *Public way* means the surface, the air space above the surface, and area below the
17 surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, concourse,
18 bridge, tunnel, parkway, waterway, dock, bulkhead, wharf, pier, easement dedicated for public
19 use, or other public way within the County, which, consistent with the purposes for which it was
20 dedicated, may be used for the purpose of installing and maintaining a cable system.

1 (z) *Service interruption* means the loss of picture or sound on one or more cable
2 channels.

3 (aa) *Service tier* means a category of cable service or other services provided by a
4 Grantee for which a separate rate is charged by the Grantee.

5 (bb) *Subscriber* means any person who legally receives or contracts with a Grantee to
6 receive cable service.

7 (cc) *Video programming* means programming provided by, or generally considered
8 comparable to programming provided by, a television broadcast station.

9 (dd) *Written or in writing* means, unless otherwise specified, communication in written
10 form, which may be made via hardcopy, e-mail to a verified e-mail address, or other similar
11 medium that the recipient can reasonably be expected to read. Such communication may direct
12 the recipient to clearly specified Web pages containing the complete details.

13 [New in Chapter 9.2]

1 proceeding in a northwesterly direction on Fox Mill Road, Route No. 665, to a point where Fox
2 Mill Road crosses the Columbia Gas Transmission Corporation pipeline easement; thence
3 following said pipeline easement in a northeasterly direction to the Dulles Airport Access Road;
4 thence westerly on the Dulles Airport Access Road to the easterly limits of the Town of
5 Herndon; thence northeasterly along the boundary of the Town of Herndon to Elden Street,
6 Route No. 606, said point also being at the intersection of Stuart Road, Route No. 680; thence
7 northeasterly on Stuart Road, Route No. 680, to Sugarland Road, Route No. 604; thence
8 northeasterly on Sugarland Road, Route No. 604, to Leesburg Pike, Route No. 7; thence
9 southeasterly on Leesburg Pike, Route No. 7, to Baron Cameron Avenue, Route No. 606; thence
10 southwesterly on Baron Cameron Avenue, Route No. 606, to Hunter Mill Road, Route No. 674;
11 thence following Hunter Mill Road, Route No. 674, thence southerly to the northeastern corner
12 of that parcel identified by Fairfax County Tax Map Reference No. 18-3, 001, parcel 1; thence
13 following southwesterly along the northern boundary of parcel 1 to the northern boundary of the
14 Equestrian Park subdivision; thence following the northern and western boundaries of the
15 Equestrian Park subdivision to the intersection of Sunset Hills Road, Route No. 675; thence
16 following Sunset Hills Road easterly to the intersection of Hunter Mill Road, Route No. 674;
17 thence following Hunter Mill Road southerly to the intersection of Sunrise Valley Drive, Route
18 No. 5320; thence proceeding southeasterly along the eastern boundary of Reston, Section 22, to
19 the eastern corner of that parcel identified by Fairfax County Tax Map Reference No. 27-2, 005,
20 parcel 57; thence following southwesterly along the eastern border of Reston, Section 22, and
21 Reston, Section 24; thence following the southern boundary of Reston, Section 24 and Reston,
22 Section 24A; thence proceeding southeasterly along the eastern boundary of that parcel identified

1 by Fairfax County Tax Map Reference No. 27-1, 0012, parcel 3; thence following southeasterly
2 along the eastern boundary of Reston, Section 10, to the intersection of Lawyers Road, Route
3 No. 673, and Hunter Station Road, Route No. 677; thence proceeding westerly on Lawyers
4 Road, Route No. 673, past the intersection of Birdfoot Lane, Route No. 671, to the northeast
5 corner of the Lawyer's Glen subdivision; thence proceeding southwesterly along the southern
6 and eastern boundaries of the Lawyer's Glen subdivision; thence following northwesterly along
7 the western boundary of the Lawyer's Glen subdivision to a point of intersection with the
8 southeast corner of the Lawyer's Ridge subdivision; thence proceeding southwesterly along the
9 southern boundary of the Lawyer's Ridge subdivision to a point of intersection with the eastern
10 boundary of Reston, Section 18; thence following southeasterly to a point of intersection with the
11 eastern corner of the Stoneledge subdivision; thence proceeding in a southerly direction along
12 the eastern boundary of the Stoneledge subdivision ; thence following in a westerly direction
13 along the northern boundary of five parcels identified by Fairfax County Tax Map Reference
14 Nos. 36-2, 001, parcel 2A, 13A, 13, 12A and 11, to a point of intersection with the southernmost
15 corner of Reston, Section 18; thence proceeding in a westerly direction along the southern
16 boundary of Reston; Section 18, to a point of intersection with the eastern boundary of Reston,
17 Section 16; thence following southwesterly from said intersection along the eastern boundary of
18 Reston, Section 16, to the northeastern boundary of that parcel identified by Fairfax County Tax
19 Map Reference No. 36-2, 009, parcel 2; thence proceeding northerly along the northeastern
20 boundary of that parcel identified by Fairfax County Tax Map Reference No. 36-2, 009, parcel 2,
21 to the border of that parcel identified by Fairfax County Tax Map Reference No. 36-2, 009,
22 parcel 1; thence following southwesterly on the southeastern boundary of those two parcels

1 identified by Fairfax County Tax Map Reference Nos. 36-2, 009, parcel 1 and 3, to the
2 intersection of the southeastern boundary of Fox Mill District Park; thence following the eastern
3 and northern boundaries of Fox Mill District Park northwesterly to Fox Mill Road, Route No.
4 665; thence northwesterly on Fox Mill Road, Route No. 665, to the intersection of Fox Mill
5 Road, Route No. 665, and Reston Avenue, Route No. 602; thence following Reston Avenue,
6 Route No. 602, northeasterly to the intersection of Fox Mill Road, Route No. 665; thence
7 northwesterly on Fox Mill Road, Route No. 665, to the point where Fox Mill Road, Route No.
8 665, crosses the Columbia Gas Transmission Corporation pipeline easement, being the point of
9 beginning.

10 Whenever the Reston franchise area is described by reference to the Columbia Gas
11 Transmission Corporation pipeline easement or to roads, the franchise area shall be delineated by
12 the line following the middle of the aforementioned pipeline easement or roads. However, if
13 construction of a franchise for the Reston Franchise Area reasonably requires a Grantee to use
14 poles or easements along any roadway which serves as a border for that franchise area, and if
15 such poles or easements are located beyond the centerline of any such roadway, and if the
16 Grantee obtains proper permission for the use of such poles or easements and pays any
17 applicable usage or attachment fees, then the Grantee may use such poles or easements to
18 construct and operate its system in the Reston Franchise Area so long as the Grantee does not
19 provide cable service to an area for which it does not hold a franchise. The map which shows the
20 above-described boundaries and which is dated May 18, 1988, is incorporated herein and is
21 designated as the official map of the Reston Franchise Area. That map shall be kept by the Clerk
22 to the Board among the official records of the Board of Supervisors, and to the extent that the

1 boundaries of the map and the boundaries described by the text of this subsection are in conflict
2 either by realignment of a road or otherwise, and where it cannot be determined clearly where
3 the boundary may lie, then the boundaries shown on the official map shall take precedence over
4 the text of this subsection.

5 (b) *North County Franchise Area:* The area of the County north of a line beginning at
6 the intersection of Little River Turnpike, Route No. 236, and westerly city limits of the City of
7 Alexandria; thence westerly along Little River Turnpike, Route No. 236, to the eastern boundary
8 of the City of Fairfax; thence along the eastern and northern boundary of the City of Fairfax to
9 Jermantown Road, Route No. 665; thence northeasterly on Jermantown Road to Oakton Road,
10 Route No. 644; thence westerly on Oakton Road, Route No. 644, to Waples Mill Road, Route
11 No. 664; thence westerly on Waples Mill Road to West Ox Road, Route No. 608; thence
12 northwesterly on West Ox Road, Route No. 608, to Centreville Road, Route No. 657; thence
13 northerly on Centreville Road to Frying Pan Road, Route No. 608; thence northwesterly on
14 Frying Pan Road to the end of said road; thence due west to point in the center of Sully Road,
15 Route No. 28; thence north on Sully Road to the County line, for the point of ending; excluding
16 the Reston Franchise Area as defined herein, the Town of Herndon, and the Town of Vienna.

17 Whenever the North County Franchise Area is described by reference to the Columbia
18 Gas Transmission Corporation pipeline easement or to roads, the franchise area shall be
19 delineated by the line following the middle of the aforementioned pipeline easement or roads.
20 However, if construction of the North County Franchise Area reasonably requires a Grantee to
21 use poles or easements along any roadway which serves as a border for that franchise area, and if
22 such poles or easements are located beyond the centerline of any such roadway, and if the

1 Grantee obtains proper permission for the use of such poles or easements, then the Grantee may
2 use such poles or easements to construct and operate its system in the North County Franchise
3 Area so long as a Grantee does not provide cable service to an area for which it does not hold a
4 franchise.

5 (c) *South County Franchise Area:* That area of the County lying south of the
6 southern border of the North County Franchise Area.

7 [Formerly Sec. 9.1-7-1; new Sec. 9.2-3-3]

8 **Section 9.2-3-4. Franchise term.**

9 The term of a franchise shall not exceed fifteen years from the date the franchise is
10 accepted by a Grantee. This provision shall not be construed to prohibit or restrict the extension
11 of an existing franchise term pending renewal proceedings pursuant to applicable law.

12 [Formerly Sec. 9.1-5-1; new Sec. 9.2-3-4]

13 **Section 9.2-3-5. Continuity of service.**

14 A Grantee shall operate its cable system pursuant to its franchise requirements without
15 interruption, except as otherwise provided in this Chapter or its franchise agreement. If the
16 Grantee's system is transferred to another party, the Grantee shall ensure an orderly transfer of
17 operations so that subscribers' service is not interrupted.

18 [Formerly Sec. 9.1-5-7; new Sec. 9.2-3-5]

19 **Section 9.2-3-6. Service availability.**

20 Pursuant to the conditions in its franchise agreement, a Grantee shall make its cable
21 services available at all residences, businesses, and other structures within its franchise area or

1 areas as long as the current or potential subscriber's financial and other obligations to the Grantee
2 are satisfied. A Grantee may refuse to provide cable service: (i) when it is unable pursuant to
3 normal industry practice after reasonable efforts to obtain necessary programming, real property
4 or access rights; (ii) when its prior service, payment, or theft of service history with a person has
5 been unfavorable; or, (iii) for other grave causes, such as threats to the Grantee's employees,
6 subject to the right of the Cable Television Administrator or designee to review and approve
7 such refusal.

8 [Formerly Sec. 9.1-7-2(a); new Sec. 9.2-3-6]

9 **Section 9.2-3-7. Line extension requirements.**

10 (a) Subject to the requirements established in Section 9.2-3-6, a Grantee may
11 condition the extension of its cable service to lower-density areas of the County on the potential
12 subscriber's payment of a line extension surcharge. Such surcharge shall be no more than the
13 amount necessary to recover the Grantee's additional actual costs of construction from the
14 subscribers paying the surcharge.

15 (b) If a resident or the County requests a cost estimate for a line extension or drop
16 installation to a particular potential subscriber, a Grantee shall provide such estimate within 45
17 days, without charge to the resident or the County. Such time period may be extended by the
18 Cable Television Administrator. Such an estimate shall include the Grantee's calculation of
19 density, a design, and a breakdown of the cost, including but not limited to materials and labor,
20 as worked out by the Grantee. A Grantee may include reasonable site survey costs in its
21 estimate, but may not charge the resident or the County for such site survey costs unless the
22 resident or the County agrees to pay for the extension. Upon its request, the County may review

1 such cost estimate, which review may include, without limitation, investigation of alternative
2 routes; however, the Grantee shall have sole discretion as to the use of any alternative route. If a
3 resident signs an agreement to pay the Grantee for costs relating to a line extension or drop
4 installation, the agreement shall include the specific amount the resident is obliged to pay.

5 [New in Chapter 9.2]

6 (c) To the extent that may be allowed by a Grantee's franchise agreement or by
7 federal or state law, the County may require a Grantee to interconnect its cable system with other
8 cable systems or other broadband communications facilities (e.g., a television communication
9 network connecting public institutions or facilities) located adjacent to or within the County.
10 Interconnection shall be made within 180 days from the date of a request by the County, or
11 within a longer period of time as may be specified by the County in its request. All signals to be
12 interconnected shall comply with FCC technical standards for all classes of signals. This
13 Chapter does not grant any retransmission rights.

14 [Formerly Sec. 9.1-7-3; new Sec. 9.2-3-7]

15 **Section 9.2-3-8. Franchise validity.**

16 A Grantee agrees, by its acceptance of a franchise, to accept the validity of the terms and
17 conditions of its franchise agreement, and of this Chapter as it stands at the time of acceptance,
18 in their entirety and that it will not, at any time, proceed against the County in any claim or
19 proceeding challenging any term or provision of this Chapter or its franchise as unreasonable,
20 arbitrary, or void, or that the County did not have the authority to impose such term or condition.

21 [Formerly Sec. 9.1-9-3; new Sec. 9.2-3-8]

1 **Section 9.2-3-9. Acts at Grantee's expense.**

2 Any act that a Grantee is or may be required to perform under this Chapter, a franchise
3 agreement, or applicable law shall be performed at the Grantee's expense, unless expressly
4 provided to the contrary in this Chapter, a franchise agreement, or applicable law.

5 [Formerly Sec. 9.1-3-3; new Sec. 9.2-3-9]

6 **Section 9.2-3-10. Eminent domain.**

7 Nothing in this Chapter shall be deemed or construed to impair or affect, in any way or to
8 any extent, the County's rights of eminent domain.

9 [Formerly Sec. 9.1-3-4; new Sec. 9.2-3-10]

10 **Section 9.2-3-11. Notice to Grantee.**

11 The Board shall not grant a renewal, approve a transfer, or shorten or revoke a franchise
12 unless the County has given the Grantee at least 30 days' advance written notice of the initial
13 meeting at which the Board will consider such action. The notice shall advise the Grantee of the
14 time, place, and purpose of the meeting. The Board's consideration or decision may be carried
15 over to a later date with oral notice to the Grantee.

16 [Formerly Sec. 9.1-5-2; new Sec. 9.2-3-11]

17 **Section 9.2-3-12. Acceptance.**

18 A franchise and all of its terms and conditions shall be accepted by a Grantee by written
19 instrument filed in hardcopy with the County Executive within 30 days after the granting of the
20 franchise.

21 [Formerly Sec. 9.1-9-8; new Sec. 9.2-3-12]

1 (4) a demonstration of the applicant's legal qualifications to construct and
2 operate the proposed cable system;

3 (5) whether, at any time during the ten years preceding the submission of the
4 application, the applicant was convicted of any act or omission of such character that the
5 applicant cannot be relied upon to deal truthfully with the County and the subscribers of the
6 cable system, or to substantially comply with its lawful obligations under applicable law,
7 including but not limited to obligations under consumer protection laws and laws prohibiting
8 anticompetitive acts, fraud, racketeering, or other similar conduct. This same criterion shall be
9 applied to each person owning an interest of five percent or more in the applicant;

10 (6) a demonstration of the applicant's financial qualifications to construct and
11 operate the proposed cable system;

12 (7) a description of the applicant's prior experience in cable system
13 ownership, construction, and operation;

14 (8) a description of the physical facilities proposed, which shall include at
15 least the following:

16 (A) a description of the proposed system's capacity, technical design,
17 performance characteristics, headend, and PEG access (including institutional network) facilities
18 and equipment;

19 (B) a description of the proposed system design, including but not
20 limited to a description of the miles of plant to be installed, and a description of the size of
21 equipment cabinets and other facilities that will be installed along the plant route, the power

1 sources that will be used and a description of the noise, exhaust, and pollutants, if any, that will
2 be generated by the operation of the same;

3 (C) a general description of the construction techniques that the
4 operator proposes to use in installing the system above-ground and underground;

5 (D) a schedule for construction of the system that describes where and
6 when construction will begin, how it will proceed, and when it will be completed, and the
7 expected effect on right-of-way usage, including information on the ability of the public ways to
8 accommodate the proposed system; and

9 (E) a description, where appropriate, of how services will be
10 converted from existing facilities to new facilities, and what will be done with existing facilities;

11 (9) a demonstration of how the applicant will reasonably meet the future
12 cable-related needs and interests of the community;

13 (10) any additional information that the County may have requested of the
14 applicant in writing prior to application that is relevant to the County's consideration of the
15 application;

16 (11) an affidavit or declaration of an authorized officer of the applicant
17 certifying the truth and accuracy of the information in the application;

18 (12) the names, addresses, phone numbers, and e-mail addresses of all persons
19 authorized to act on behalf of the applicant with respect to the application, pursuant to Section
20 9.2-4-3;

1 (13) a cover letter prominently describing any deadline by which the applicant
2 believes the County must act on the application pursuant to federal or state law, including but not
3 limited to 47 C.F.R. § 76.41 and Virginia Code § 15.2-2108.21.

4 (d) The Cable Television Administrator shall review any application received by the
5 County to determine whether it is complete. The Cable Television Administrator may waive in
6 writing the provision of any of the information required by this Section. The Cable Television
7 Administrator may reject any application that the Cable Television Administrator deems
8 incomplete with respect to the information required in subsection (c), specifying in such rejection
9 what additional information must be supplied to complete the application, and such rejection
10 shall constitute denial of the application without prejudice for purposes of federal and state law.

11 (e) An application pursuant to subsections (a)-(d) shall not be required to the extent
12 that an entity submits a request to negotiate a franchise pursuant to Virginia Code § 15.2-
13 2108.21.

14 (f) The Cable Television Administrator may reasonably request further information
15 from any entity seeking a cable franchise. The entity seeking a franchise shall provide such
16 information in full cooperation with the County, pursuant to such reasonable deadlines as the
17 Cable Television Administrator may establish.

18 (g) In evaluating a potential franchise, the County may consider, without limitation,
19 the following factors:

20 (1) The extent to which the potential Grantee has substantially complied with
21 applicable law and the material terms of any existing cable franchise in the County;

1 (2) Whether the quality of the potential Grantee’s service under any existing
2 franchise, including but not limited to signal quality, response to subscriber or former subscriber
3 complaints, and billing practices has been reasonable in light of the needs and interests of the
4 communities served;

5 (3) Whether the potential Grantee has the financial, technical, and legal
6 qualifications to provide cable service;

7 (4) Whether the potential Grantee’s proposal is reasonable to meet the future
8 cable-related needs and interests of the community, taking into account the cost of meeting such
9 needs and interests;

10 (5) Whether the potential Grantee will provide adequate PEG access capacity,
11 facilities, and financial support;

12 (6) Whether the potential Grantee files materially misleading information in
13 its application or intentionally withholds material information that the potential Grantee lawfully
14 is required to provide;

15 (7) Whether there is any reason why issuance of a franchise to the potential
16 Grantee under the applicable circumstances would not be in the public interest.

17 (h) The Consumer Protection Commission may hold one or more public hearings for
18 purposes of public input.

19 (i) Any franchise granted by the Board shall be granted by adoption of an ordinance.

20 (j) If the Board decides not to grant a franchise, it will adopt a resolution stating why
21 the franchise was not granted.

1 (k) This Chapter does not grant any existing Grantee or other third party standing to
2 challenge either (1) the denial of any other person’s application or request, or (2) the issuance of
3 a franchise to any other person.

4 [Formerly Sec. 9.1-3-5; new Sec. 9.2-4-1]

5 **Section 9.2-4-2. Application for grant of renewal franchise.**

6 (a) The renewal of any franchise to provide cable service shall be conducted in a
7 manner consistent with applicable federal and state law.

8 (b) Misrepresentation or fraud by the applicant shall be grounds for denial of an
9 application.

10 (c) If a renewal of a franchise is denied, the Board may acquire ownership of the
11 cable system or effect a transfer of ownership of the system to another person, subject to
12 applicable law and the Grantee’s franchise agreement. Any such acquisition or transfer shall be
13 at fair market value of the system as of the expiration date of the franchise valued as a going
14 concern but with no value allocated to the franchise itself.

15 [Formerly Sec. 9.1-3-6; new Sec. 9.2-4-2]

16 **Section 9.2-4-3. Applicant representatives.**

17 Any person who seeks an initial or renewal franchise with the County shall forthwith, at
18 all times, disclose to the County, in writing, the names, addresses, phone numbers, and e-mail
19 addresses of all persons who are authorized to represent or act on behalf of the applicant in those
20 matters pertaining to the proposed franchise. This disclosure shall specifically identify at least
21 one individual who has authority to make negotiating decisions on behalf of the applicant and

1 will participate in negotiations. The requirement to make the disclosure described in this Section
2 shall continue until the County has granted or denied an application, or until an entity withdraws
3 its application or ceases to seek a franchise with the County.

4 [Formerly Sec. 9.1-3-7; new Sec. 9.2-4-3]

5 **Section 9.2-4-4. Franchise modification.**

6 (a) No franchise agreement shall be modified without approval by the Board and the
7 Grantee.

8 (b) A Grantee may request a modification of its franchise agreement by submitting a
9 written application to the Cable Television Administrator. To be acceptable for filing, a signed
10 original of the application shall be submitted together with an electronic copy of the application
11 in searchable PDF format or other searchable electronic format acceptable to the County. The
12 application must contain all information required in this Section or pursuant to applicable federal
13 or state law.

14 (c) An application for modification shall provide, at a minimum, the following
15 information, and shall clearly identify, by Code section, where each item of information required
16 by this Section appears in the application:

- 17 (1) the specific modification requested;
- 18 (2) the justification for the requested modification, including but not limited
19 to the impact of the requested modification on subscribers and others, and the financial impact on
20 the applicant if the modification is approved or disapproved, demonstrated through, inter alia,
21 submission of pro forma financial statements;

1 (3) a statement indicating whether the modification is sought pursuant to
2 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards
3 set forth in 47 U.S.C. § 545;

4 (4) any additional information that the County may have requested of the
5 applicant in writing prior to application that is relevant to the County's consideration of the
6 application;

7 (5) any other information that the applicant believes is necessary for the
8 County to make an informed determination on the application for modification;

9 (6) a cover letter prominently describing any deadline by which the applicant
10 believes the County must act on the application pursuant to federal or state law; and

11 (7) an affidavit or declaration of an authorized officer of the applicant
12 certifying the truth and accuracy of the information.

13 [Formerly Sec. 9.1-5-3; new Sec. 9.2-4-4, reversing (a) and (b)]

14 (d) An application for modification shall be reviewed as indicated in Section 9.2-4-
15 1(d). The Cable Television Administrator may request further information as provided in
16 Section 9.2-4-1(f).

17 [New in Chapter 9.2]

1 (3) other information sufficient to provide a complete and accurate
2 understanding of the financial position of the cable system before and after the proposed transfer;

3 (4) complete information regarding any potential impact of the transfer on
4 subscriber rates and service;

5 (5) information sufficient to show the proposed transferee's legal, technical,
6 and financial qualifications to operate the cable system and satisfy the franchise obligations; and

7 (6) any contracts or other documents that relate to the proposed transaction,
8 and all documents, schedules, exhibits, or information referred to therein, that the County
9 requests in writing prior to the submission of the application.

10 (e) To the extent consistent with federal law, the County may waive in writing any
11 requirement that information be submitted as part of the transfer application, without thereby
12 waiving any rights the County may have to request such information after the application is filed.

13 (f) For the purposes of determining whether the Board should approve a transfer, the
14 County or its agents may inquire into all qualifications of the prospective transferee and such
15 other matters as the County may deem necessary to determine whether the transfer is in the
16 public interest and should be approved, denied, or conditioned as provided under subsection (g).
17 A Grantee and any prospective transferees shall assist the County in any such inquiry, and if they
18 fail to do so, the request for a transfer may be denied.

19 (g) In making a determination as to whether to approve, deny, or approve subject to
20 conditions, an application for a transfer of a franchise, the Board may consider, by way of
21 example and not limitation, the legal, financial, and technical qualifications of the transferee to
22 operate the cable system; any potential impact of the transfer on subscriber rates or services;

1 whether a Grantee is in compliance with its franchise agreement and this Chapter and, if not, the
2 proposed transferee's commitment to cure such noncompliance; whether the transferee owns or
3 controls any other cable system in the County, and whether operation by the transferee may
4 eliminate or reduce competition in the delivery of cable service in the County; and whether
5 operation by the transferee or approval of the transfer would adversely affect subscribers, the
6 public, or the County's interest under this Chapter, a franchise, or other applicable law. The
7 Board shall not withhold its approval unreasonably.

8 (h) Any franchise transfer without the Board's prior written approval shall be
9 ineffective, shall make the franchise subject to revocation at the County's sole discretion, and
10 shall subject the Grantee and/or transferee to any other remedies available under a franchise
11 agreement, this Chapter, or other applicable law.

12 (i) No application for a transfer of a franchise shall be approved unless the transferee
13 agrees in writing that it will abide by and accept all terms of this Chapter, the franchise
14 agreement, and any terms the Board requires as a condition of the transfer pursuant to subsection
15 (g), and that it will assume the obligations, liabilities, and responsibility for all acts and
16 omissions, known and unknown, of the previous Grantee(s) under this Chapter and the franchise
17 agreement, for all purposes, including renewal, unless the County, in its sole discretion,
18 expressly waives these requirements in whole or in part.

19 (j) Approval by the Board of a transfer shall not constitute a waiver or release of any
20 of the rights of the County under this Chapter and a franchise agreement, whether arising before
21 or after the date of the transfer.

22 (k) For the purposes of this Section, a transfer means any transaction for which the

1 County's approval is required pursuant to the Grantee's franchise agreement.

2 [Formerly Sec. 9.1-5-10; new Sec. 9.2-5-1]

1 however, apply to any such providers to the extent that their activities occur on public or private
2 property outside the public rights-of-way.

3 (b) A Grantee shall construct, operate, and maintain its cable system subject to the
4 supervision of the County or its designees, and in compliance with all applicable laws,
5 ordinances, rules, and regulations, including any amendments thereto. The cable system and all
6 its parts shall be subject to inspection by the County. The County may upon request review a
7 Grantee's plans for any construction project prior to commencement of construction.

8 (c) No construction, reconstruction, or relocation of a system or any part thereof
9 within the public ways shall be commenced until all applicable permits have been obtained. The
10 County may impose such conditions and regulations as are necessary for the purpose of
11 protecting any structures in the public ways and for the proper restoration of such public ways
12 and structures, and for the protection of the public and the continuity of pedestrian and vehicular
13 traffic.

14 (d) A Grantee shall perform maintenance on its system so that activities likely to
15 result in an interruption of service are performed during periods of minimum subscriber use of
16 the system. A Grantee shall provide reasonable notice to subscribers and the County before
17 interrupting service for planned maintenance or construction that is expected to take four hours
18 or more, except that no such notice shall be necessary for planned maintenance or construction
19 taking place between 12 midnight and 6 a.m. Notice shall be provided by a method reasonably
20 calculated to give subscribers actual notice of the planned interruption.

21 (e) Maintenance of a system shall be performed in accordance with technical
22 performance and operating standards established pursuant to FCC rules and regulations. The

1 County may monitor a Grantee’s maintenance practices and, to the extent permitted by
2 applicable law, may waive requirements or adopt additional requirements as reasonable to ensure
3 the system remains capable of providing high-quality service.

4 [Formerly Sec. 9.1-7-4(a)-(e); new Sec. 9.2-6-3]

5 (f) A Grantee shall have the authority to trim trees and shrubs on County property at
6 its own expense as may be necessary to protect its wires and facilities, subject to the regulation,
7 supervision, and direction of the County.

8 [Formerly Sec. 9.1-7-7(l); new Sec. 9.2-6-3(f)]

9 (g) In the event of an emergency, or where a cable system creates or is contributing to
10 an imminent danger to health, safety, or property, or is an unauthorized use of property, a
11 Grantee, at its own expense, shall remove, replace, or relocate any or all parts of its system at the
12 request of the County. If the Grantee fails to comply with the County’s request, the County may
13 remove or relocate any or all parts of the Grantee’s cable system without prior notice, at the sole
14 expense of the Grantee. A Grantee shall not be responsible under this Chapter or its franchise
15 agreement if such County action results in a breach of any applicable obligation of a Grantee.
16 The County shall not be liable to the Grantee for any damages arising from such removal or
17 relocation.

18 [Formerly Sec. 9.1-7-7(j); new Sec. 9.2-6-3(g)]

19 **Section 9.2-6-4. Construction standards and procedures.**

20 (a) A Grantee shall maintain all wires, conduits, cables, and other real and personal
21 property and facilities comprising its cable system in good condition, order, and repair.

1 (b) No construction, upgrade, rebuild, reconstruction, or relocation of a cable system,
2 or any part thereof, within any public way shall be commenced unless valid permits have been
3 obtained. Failure to obtain required permits or other approvals shall in no way relieve a Grantee
4 of its obligations under this Chapter and/or a franchise agreement, except that in case of
5 emergency, a Grantee may carry out work to the extent necessary pending the issuance of such
6 permits, as long as the Grantee acts to secure the permits as soon as possible.

7 (c) In the event of disturbance of any public way or public or private property by a
8 Grantee, it shall, at its own expense and in a manner approved by the County, repair, restore, and
9 replace any property disturbed, damaged, or in any way injured by or on account of its activities
10 substantially to its condition immediately prior to the disturbance, damage, or injury. Under
11 normal operating conditions, such repair, restoration, or replacement shall be completed at the later
12 of 30 days from the date the damage is incurred or 30 days from when the work causing such
13 damage is completed, weather permitting. In the event the Grantee fails to timely perform such
14 repair, restoration, or replacement, the County shall have the right to do so at the sole expense of the
15 Grantee. Payment to the County for such repair, restoration or replacement shall be upon demand.
16 Nothing in this Section shall impair any rights of the owners of such private property to assert any
17 claim against a Grantee arising out of such disturbance.

18 (d) A Grantee shall cooperate with all gas, electric, telephone, water, sewer, and other
19 utilities in the placement of its facilities, equipment, or fixtures, so as to minimize the costs and
20 disruption caused by any construction activities.

21 (e) A Grantee shall maintain the service of, shore up, sling, support, protect, and
22 make good, as directed, all water pipes, gas pipes, service pipes, sewers and sewer connections,

1 conduits, ducts, manholes, drains, vaults, buildings, tracks or other structures, sub-structures of
2 public utility companies, and all service lines and structures, including sub-structures of private
3 abutting owners, that are located within the lines of system construction and may be subject to
4 disturbance or injury during the progress of the construction. A Grantee shall provide at its own
5 cost and expense all supports and all labor and material necessary to reconnect and restore to
6 substantially their original condition all such structures that become disturbed or damaged.

7 (f) Upon reasonable notice, a Grantee shall, by a time specified by the County,
8 protect, support, temporarily disconnect, relocate, or remove any of its property when required
9 by the County by reason of traffic conditions; public safety; construction, maintenance, repair
10 (including resurfacing or widening), or change of grade in public ways or on other public
11 property; or construction, installation or repair of sewers, drains, water pipes, power lines, signal
12 lines, tracks, or any other type of government-owned communications system, public work or
13 improvement or any government-owned utility; provided, however, that a Grantee shall, in all
14 such cases, with the County's consent, have the option of abandoning any property in place.

15 (g) If any person that is authorized to place facilities in the public ways requests a
16 Grantee to protect, support, temporarily disconnect, remove, or relocate its facilities to
17 accommodate the construction, installation, operation, maintenance, or repair of the facilities of
18 such other person, the Grantee shall, after 30 days' advance written notice, take action to effect
19 the necessary changes requested. Unless the matter is governed by a valid contract between the
20 parties, a pole attachment agreement, or federal law or regulation or state law, or in any cases
21 where the cable system that is being requested to move was not lawfully located in the public
22 ways, then the reasonable cost of the same shall be borne by the person requesting the protection,

1 support, temporary disconnection, removal, or relocation and performed at no charge to the
2 County.

3 (h) A Grantee shall, on the request of any person holding a valid building moving
4 permit issued by the County, or on request of the County, temporarily raise or lower its wires to
5 permit the moving of buildings. The expense of such temporary removal or raising or lowering
6 of wires shall be paid by the requesting party. If the requesting party is the County, the Grantee
7 will invoice the County, and the County will pay, following completion of work. If the
8 requesting party is not the County, the Grantee shall have the authority to require payment in
9 advance. The Grantee shall be given reasonable advance notice in writing to arrange for such
10 temporary wire changes.

11 (i) A Grantee shall utilize existing poles, conduits, and other facilities whenever
12 possible. However, no location of any pole or wire-holding structure of a Grantee shall be a
13 vested interest. A Grantee shall remove, replace, or modify such poles, structures, or facilities at
14 its own expense whenever the Board determines that doing so would enhance the public
15 convenience. A Grantee shall file copies of agreements for use of conduits or other facilities
16 with the County upon County request.

17 (j) Where the County desires to make use of the poles or other wire-holding structures
18 of a Grantee, but cannot reach agreement with the Grantee, the Board may require the Grantee to
19 permit such use if the Board determines that the use would enhance the public convenience and
20 would not unduly interfere with the Grantee's operations.

21 (k) Unless otherwise regulated, all transmission lines, equipment, and structures shall be
22 installed and located to cause minimum interference with the rights and reasonable convenience of

1 owners of property that adjoins or abuts a street, way, or other property upon which a Grantee has
2 placed its facilities, and at all times such facilities shall be kept and maintained in a safe, functional
3 condition, and in good order. A Grantee shall at all times employ reasonable care and shall install
4 and maintain commonly accepted methods and devices for preventing failures and accidents that
5 are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights,
6 flares, or other devices shall be used at such times and places as are reasonably required for the
7 safety of all members of the public. Any poles or other fixtures placed in any public way by a
8 Grantee shall be placed in such a manner as not to interfere with the usual travel on such public
9 way.

10 (l) New buried plant shall be capable of location using generally-available locating
11 devices.

12 (m) A Grantee shall be a member of the regional notification center for subsurface
13 installations (Miss Utility) and shall field mark the locations of its underground facilities upon
14 request. A Grantee shall locate its facilities for the County or other governmental authority at no
15 charge.

16 (n) Any contractor or subcontractor used for work or construction, installation,
17 operation, maintenance, or repair of system equipment must be properly licensed under state and
18 local law, where applicable, and each contractor or subcontractor shall have the same obligations
19 with respect to its work as a Grantee would have if the work were performed by the Grantee. A
20 Grantee must ensure that contractors, subcontractors, and all employees who perform work for it
21 are trained and experienced, and that one member of each work crew is responsible for
22 communicating in the official language of the Commonwealth with County and other

1 governmental personnel at the work site. A Grantee shall be responsible for ensuring that the
2 work of contractors and subcontractors is performed consistent with its franchise agreement and
3 applicable laws, regulations, policies, and procedures; for all acts or omissions of contractors or
4 subcontractors; and for promptly correcting acts or omissions by any contractor or subcontractor.

5 A Grantee shall have a quality control program to ensure that the work is properly performed.

6 (o) A Grantee shall notify affected parties prior to commencing any proposed
7 construction, repair, or general preventive maintenance, except for emergency maintenance or
8 repair, that will significantly disturb or disrupt private property, public property, or public ways,
9 or have the potential to present a danger or affect the safety of the public generally. Where
10 possible, a Grantee shall publicize proposed construction work at least five days prior to
11 commencement of that work by notifying those residents and others in the immediate vicinity of
12 where work is to be done and most likely to be affected by the work in at least one of the
13 following ways: by print or electronic mail, by distribution of door hangers or flyers to
14 residences, or in any other manner reasonably designed to provide adequate notice. Notice to
15 affected Persons must include the local telephone number of a Grantee representative who is
16 qualified to answer questions concerning proposed construction, repair, or general preventive
17 maintenance.

18 (p) A Grantee shall provide the Cable Television Administrator a daily report
19 identifying the location and time of any scheduled maintenance and/or construction. The
20 Grantee shall send the report in such a manner to insure delivery to the Cable Television
21 Administrator no later than 7:30 a.m. on the day the maintenance and/or construction is
22 scheduled.

1 [Formerly Sec. 9.1-7-7; new Sec. 9.2-6-4]

2 **Section 9.2-6-5. Construction schedule and reports.**

3 (a) Before accepting a franchise, a Grantee shall obtain all necessary federal, state, and
4 local licenses, permits, and authorizations required for the conduct of its business and its initial
5 construction, installation, operation, maintenance, and repair of its facilities.

6 (b) Every franchise agreement shall specify the construction schedule that will apply to
7 any required initial construction or franchise-wide upgrade of a cable system. The schedule shall
8 provide for timely completion of the project, considering the amount and type of construction
9 required, and shall show areas of the County that will be affected. For the purposes of this Section,
10 construction shall be deemed to have commenced when the first aerial strands of coaxial or fiber
11 optic cable have been attached to a pole, or the first underground trench has been opened. The
12 failure of a Grantee to secure the necessary federal, state, and local licenses, permits, and
13 authorizations required for the conduct of its business shall in no way relieve the Grantee from the
14 obligations of this Section. The failure to meet the construction schedule specified in a franchise
15 agreement shall, among other rights and remedies available to the County under a franchise
16 agreement or applicable law, constitute grounds for shortening or revocation of the franchise, as a
17 failure to construct its cable system in accordance with its franchise agreement pursuant to
18 Section 9.2-10-6(a).

19 (c) Litigation instituted by a third party shall not suspend the Grantee's obligation to
20 construct, install, and operate its cable system in accordance with the construction or upgrade
21 schedule set forth in its franchise agreement.

1 (d) An initial franchise shall include a timetable showing the percentage of occupied
2 dwelling units within the applicable franchise area that will be capable of receiving cable service at
3 the end of each year following the beginning of construction.

4 (e) Within three months after accepting an initial franchise, a Grantee shall furnish the
5 Cable Television Administrator a construction schedule and map setting forth target dates consistent
6 with paragraphs (b) and (d) of this Section, for commencement of service to subscribers, and
7 identifying the areas to be served. The schedule and map shall be updated whenever substantial
8 changes become necessary.

9 (f) Every three months after the start of initial construction, a Grantee shall furnish the
10 Cable Television Administrator a map that clearly defines the areas where cable service is available,
11 until the construction scheduled pursuant to subsection (e) is complete.

12 (g) The Cable Television Administrator may waive any provision of this Section for
13 good cause.

14 [Formerly Sec. 9.1-7-8; new Sec. 9.2-6-5]

15 **Section 9.2-6-6. Tests and inspections.**

16 (a) A Grantee shall perform all tests necessary to ensure compliance with the
17 requirements of a franchise agreement and other performance and technical standards established
18 by applicable law or regulation, and to ensure that system components are operating as expected.
19 All tests shall be conducted in accordance with federal rules and applicable technical standards,
20 such as the most recent edition of the *SCTE Measurement Recommended Practices for Cable*
21 *System* and the ANSI/SCTE 40 2011 Digital Interface Standard. In the event that such technical
22 performance standards are repealed or are no longer specified in applicable law, such standards

1 shall remain in force and effect until the County, to the extent permitted by applicable law,
2 imposes standards as it shall deem necessary for the operation of the cable system in accordance
3 with good engineering practices.

4 (b) A Grantee shall conduct tests as follows:

5 (1) A Grantee shall conduct semiannual system tests to determine compliance
6 with applicable standards and rules if so directed by the Cable Television
7 Administrator; and

8 (2) If a subscriber is affected by repeated signal problems, the County may
9 require the Grantee to conduct additional reasonable tests, including full or
10 partial repeat tests, different test procedures, or tests involving the specific
11 subscriber's terminal, at a Grantee's expense, to the extent such tests are in
12 accordance with FCC rules and may be performed by the Grantee's
13 employees utilizing its existing facilities and equipment. The County, or a
14 consultant designated by the County, may observe any tests conducted by
15 the Grantee for this purpose, and the Grantee will cooperate with the
16 County or its consultant. The County may, if the signal problems
17 continue, and if permitted by the subscriber, conduct independent tests
18 within the subscriber's premises. The County will coordinate in writing
19 with the Grantee the timing of such tests so that Grantee's personnel may
20 observe the tests. The County and the Grantee will cooperate to ensure
21 that such tests do not interfere with Grantee's cable system, do not cause

1 damage to subscriber's equipment, and are conducted in accordance with
2 applicable technical standards.

3 (c) Tests conducted pursuant to subsection (b) shall be supervised by a Grantee's
4 engineer, who shall sign all records of tests provided to the County.

5 (d) The County shall have the right to witness and/or review tests of a cable system
6 conducted pursuant to subsection (b), and any tests that affect the I-Net, or affect service to
7 County or Fairfax County Public School sites. A Grantee shall provide the County with
8 reasonable advance notice of tests the County has the right to witness pursuant to this paragraph.

9 (e) A Grantee shall file a written report of test results under subsection (b) with the
10 County within seven days of each test. Such reports shall, at a minimum, describe test results,
11 instrumentation, calibration, and test procedures. In addition, the Grantee shall retain written
12 reports of the results of any tests required by the FCC, and such reports shall be submitted to the
13 County upon the County's request. The County shall have the same rights the FCC has to inspect
14 a Grantee's performance test data.

15 (f) If any test under subsection (b) indicates that any part or component of a system
16 fails to meet applicable requirements, the Grantee, without requirement of additional notice or
17 request from the County, shall take corrective action, retest, advise the County of the action
18 taken and results achieved, and supply the County with a copy of the results within 30 days from
19 the date corrective action was completed.

20 (g) The County may inspect construction areas and subscriber installations, including
21 but not limited to inspections to assess compliance with a Grantee's construction and installation
22 requirements. The County shall notify a Grantee of any violations found during the course of

1 inspections, identifying the locations with particularity and stating the specific nature of the
2 violation. The Grantee shall bring violations specified in the notice that are within Grantee's
3 control into compliance as follows: (i) safety violations shall be made safe within 48 hours of
4 receiving notice of the violation; (ii) Virginia Department of Transportation violations shall be
5 brought into compliance within five days of receiving notice of the violation; and (iii) all other
6 violations shall be brought into compliance within 30 days of receiving notice of the violation.
7 After the specified time period, the Grantee shall submit a written response, describing the steps
8 it has taken to bring itself into compliance. Inspection does not relieve a Grantee of its
9 obligation to build in compliance with all provisions of its franchise.

10 [Formerly Sec. 9.1-7-5; new Sec. 9.2-6-6]

11 **Section 9.2-6-7. Connections to the cable system.**

12 To the extent consistent with federal law, subscribers shall have the right to attach
13 devices to a Grantee's cable system to allow them to transmit signals or service to video
14 recorders, receivers, and other terminal equipment, and to use their own remote control devices
15 and converters, and other similar equipment, so long as such devices do not interfere with the
16 operation of a Grantee's cable system, or the reception of any cable subscriber, nor serve to
17 circumvent a Grantee's security procedures, nor for any purpose to obtain services illegally. A
18 Grantee shall make information available to consumers to assist them in adjusting such devices
19 so that they may be used with a Grantee's cable system.

20 [Formerly Sec. 9.1-9-12; new Sec. 9.2-6-7]

1 necessary to confirm the accurate payment of amounts payable under a franchise agreement or
2 applicable law, without regard to by whom such records are held. Such records shall be made
3 available pursuant to the requirements of this Chapter and the franchise agreement.

4 (d) The County's audit expenses shall be borne by the County unless the audit
5 discloses an underpayment of more than three percent of any quarterly payment, in which case
6 the County's out-of-pocket costs of the audit shall be borne by a Grantee as a cost incidental to
7 the enforcement of its franchise. Any additional undisputed amounts due to the County as a
8 result of the audit shall be paid within 30 days following written notice to a Grantee by the
9 County of the underpayment, which notice shall include a copy of the audit report. If
10 recomputation results in additional revenue to be paid to the County, interest will be due as
11 specified in this Section.

12 (e) In the event that any payment or recomputation amount less than Five Thousand
13 Dollars is not made on or before the required date, interest shall be charged from the due date at
14 an annual rate equal to the commercial prime interest rate of the County's primary depository
15 bank, compounded annually, during the period the unpaid amount is due. In the event that any
16 payment (or payments) or any recomputation amount totaling Five Thousand Dollars or more is
17 not paid by the due date, then interest shall accrue to the County from the due date at a rate equal
18 to the interest rate then chargeable for unpaid federal income taxes for large corporate
19 underpayments (26 U.S.C. § 6621), compounded annually. In addition to the foregoing, the
20 failure of a Grantee to make a timely payment (as defined by Virginia Code § 6.1-330.80) of any
21 amount required or recomputed under this Section shall subject a Grantee to an additional late
22 charge of five percent of the amount of such payment. However, for good cause, the Cable

1 Television Administrator may waive the provisions of this Subsection for a period not to exceed
2 five business days.

3 [Formerly Sec. 9.1-5-8(c)-(g); new Sec. 9.2-7-2]

4 **Section 9.2-7-3. Termination, acceptance, and methodology.**

5 (a) In the event a franchise is shortened or revoked prior to its expiration date, a
6 Grantee shall file with the County, within 90 days of the effective date of termination, a financial
7 statement certified by an independent certified public accountant that clearly shows the gross
8 revenues received by the Grantee from the end of the previous fiscal quarter through the
9 effective date of termination and any other information required to support the computation of
10 Grantee's payments, and shall pay within that time any fees or other financial obligations
11 accrued or accruing as of the effective date of termination.

12 (b) The County's acceptance of any payment shall not be construed as an
13 acknowledgment or an accord and satisfaction that the amount paid is the correct amount due,
14 nor shall such acceptance of payment be construed as a release or waiver of any claim that the
15 County may have for additional sums due and payable. However, the County's acceptance of
16 full payment of the amount determined to be due by the County through an audit shall be
17 construed as an accord and satisfaction.

18 (c) If a Grantee proposes to change (i) its methodology for calculating or paying any
19 amounts payable under a franchise agreement, (ii) its methodology for calculating or paying the
20 state Communications Sales and Use Tax amounts attributable to the County, or (iii) its
21 methodology for itemizing or passing any through to Subscribers any such amounts (where
22 applicable), the Grantee shall first provide written notice to the Cable Television Administrator

1 explaining the nature of the change, the reason for the change, and the effect of the change on the
2 amounts paid to the County.

3 [Formerly Sec. 9.1-5-8(j)-(k); new Sec. 9.2-7-3]

1 (C) If any books, records, maps, plans, or other documents requested
2 pursuant to this subsection (a) are too voluminous, or for security reasons cannot be copied and
3 moved, then a Grantee may request that the inspection take place at a location mutually agreed to
4 by the County and the Grantee, provided that (i) the Grantee must make necessary arrangements
5 for copying documents selected by the County after its review; and (ii) the Grantee must pay all
6 travel and additional copying expenses incurred by the County (above those that would have
7 been incurred had the documents been produced in the County) in inspecting those documents or
8 having those documents inspected by its designee.

9 (b) A Grantee shall keep complete and accurate books of account and records of its
10 business and operations under and in connection with its franchise agreement.

11 (c) For the time period specified in its franchise agreement, a Grantee shall maintain:

12 (1) Financial records sufficient to provide full support for the calculation of
13 any payments to the County or any PEG programmer, or of any state tax that is distributed to the
14 County in whole or in part, and for any audit and recomputation thereof, including but not
15 limited to records sufficient to enable County review of all allocation of gross revenues among
16 bundled services.

17 (2) Records of complaints. The term "complaints" as used herein and
18 throughout this Chapter refers to complaints recorded through a Grantee's normal procedures
19 about any aspect of the Grantee's cable system or its operations, including but not limited to
20 complaints about employee courtesy. This paragraph does not apply to service calls, which are
21 treated under paragraph (4) below.

1 (3) Records of outages, indicating date, estimated duration, estimated area,
2 and the estimated number of Subscribers affected, type of outage, and cause.

3 (4) Records of service calls for repair and maintenance indicating the date and
4 time service was required, the date and time service was scheduled (if it was scheduled), and the
5 date and time service was provided.

6 (5) Records of installation/reconnection and evaluation of line extension
7 requests, indicating date of request, and the date and time service was extended.

8 (d) The County may require additional information, records, and documents from
9 time to time.

10 (e) A Grantee shall maintain a file of records open to public inspection in accordance
11 with applicable FCC rules and regulations.

12 (f) Each Grantee shall take all reasonable steps required to ensure that it is able to
13 provide the County with all information that must be provided or may be requested under this
14 Chapter, a franchise agreement, or applicable law. Each Grantee shall be responsible for
15 redacting any data that applicable law prevents it from providing to the County. Nothing in this
16 Section shall be read to require a Grantee to violate federal or state law protecting subscriber
17 privacy.

18 (g) Subject to the requirements of the Virginia Freedom of Information Act, Virginia
19 Code § 2.2-3700, et seq., and the disclosure requirements of any other applicable law, the County
20 shall take reasonable steps to protect the proprietary and confidential nature of any books,
21 records, maps, plans, or other County-requested documents that are provided pursuant to this

1 Chapter or a franchise agreement to the extent they are reasonably designated as such by a
2 Grantee.

3 (h) The Cable Television Administrator may, for good cause, waive in writing any of
4 the reporting provisions in a franchise agreement or this Chapter.

5 [Formerly Sec. 9.1-6-2; new Sec. 9.2-8-1]

1 **Section 9.2-9-2. Telephone answering.**

2 (a) A Grantee shall maintain a publicly-listed, toll-free telephone number, answered
3 by a customer service representative or automated answering system, that shall be available to
4 subscribers 24 hours per day, each day of the year. A customer service representative shall be
5 available at this number to respond to service calls 24 hours per day, each day of the year, and to
6 respond to other inquiries at least during normal business hours.

7 [Formerly Sec. 9.1-7-6(b) (subparagraphs are new); new Sec. 9.2-9-2]

8 (1) Measurement of the standards in 47 C.F.R. § 76.309(c)(1)(ii) shall include
9 all calls received by the Grantee at all call centers receiving calls from subscribers or former
10 subscribers in the County, whether they are answered by a customer service representative,
11 answered by an automated system, or abandoned by the caller while waiting.

12 (2) Upon the County's request, a Grantee shall provide the full calculation for
13 its call percentages, including but not limited to a full explanation of any adjustment or
14 normalization of call data by the Grantee.

15 (3) A Grantee shall make it possible for subscribers who are deaf or hard of
16 hearing to communicate with the Grantee by telephone.

17 [New in Chapter 9.2]

18 **Section 9.2-9-3. Offices and service.**

19 (a) A Grantee shall maintain a location within the County that shall be open and
20 accessible to the public during normal business hours to make payments and to pick up or drop
21 off equipment; provided, however, that a Grantee may satisfy the pick-up and drop-off

1 requirement by having a representative go to the subscriber's or former subscriber's residence or
2 by using a prepaid mailer rather than by performing that function at a location in the County; and
3 that a Grantee may satisfy the payment requirement by providing other locations within the
4 franchise area where such payments can be made. A Grantee shall maintain a convenient
5 location that shall be open and accessible to the public to make inquiries during normal business
6 hours.

7 [Formerly Sec. 9.1-7-6(c); new Sec. 9.2-9-3(a)]

8 (b) A Grantee shall provide maintenance service capable of promptly locating and
9 correcting system malfunctions. This maintenance service shall respond at all hours to correct
10 system malfunctions affecting one or more percent of a Grantee's total number of subscribers or
11 500 or more homes, whichever is less, for more than one hour.

12 [Formerly Sec. 9.1-7-6(d); new Sec. 9.2-9-3(b)]

13 (c) A Grantee shall use its best efforts to comply with the following standards;
14 however, a Grantee shall not be subject to enforcement measures for noncompliance with these
15 standards if, under normal operating conditions, the standards are met at least 95 percent of the
16 time, measured quarterly. Calculation of the 95 percent standard for installations shall exclude
17 any installation that requires a line extension.

18 (1) For purposes of this Section 9.2-9-3, "standard installation" means one
19 where the potential subscriber's premises are within 200 feet of the existing distribution system.

20 (2) A Grantee shall complete all standard installations within seven business
21 days after the order is placed; except that where a Grantee is installing fiber to the premises, the

1 Grantee shall complete all standard installations within 14 business days after the order is placed.

2 (3) A Grantee shall complete all installations other than standard installations
3 within 30 days after the order is placed, unless, for reasons beyond the Grantee's control, the
4 work could not be completed in that time period even with the exercise of all due diligence, in
5 which case the Grantee shall complete the work in the shortest time possible.

6 (4) If the management or builder of a multiple dwelling unit (MDU) contacts
7 a Grantee to inquire as to service, the Grantee shall respond to the initial inquiry and any
8 subsequent communications from the MDU within 14 days of each such communication. If a
9 site visit is required, the Grantee shall schedule the site visit at a mutually convenient time no
10 later than 30 days after the MDU signs an access agreement with the Grantee. In an occupied
11 MDU, the Grantee shall commence construction no later than 120 days after the MDU and the
12 Grantee have approved a site design. The Cable Television Administrator may waive the
13 deadlines in this paragraph for good cause.

14 (5) A Grantee shall commence work on service interruptions affecting more
15 than 100 subscribers within four hours after the Grantee becomes aware of the interruption,
16 including Saturdays, Sundays, and legal holidays.

17 (6) A Grantee shall commence work on service interruptions affecting 100 or
18 fewer subscribers within 24 hours after the Grantee becomes aware of the interruption, including
19 Saturdays, Sundays, and legal holidays. If the Grantee needs to arrange a subscriber
20 appointment to do such work, this requirement shall be satisfied if, within that 24-hour period,
21 the Grantee offers the subscriber an appointment time convenient for the subscriber, and Grantee
22 commences work at that time. If a total interruption of all channels is not repaired at the time of

1 the scheduled appointment, the subscriber will receive a pro-rated credit for each 24-hour period,
2 or segment thereof, that the service interruption continues beyond the scheduled repair call.

3 (7) A Grantee shall commence work on all requests for service other than
4 service interruptions by the next business day after it receives the request for service or otherwise
5 becomes aware of the need for service. If the Grantee needs to arrange a subscriber appointment
6 to do such work, this requirement shall be satisfied if the Grantee offers the subscriber an
7 appointment time convenient for the subscriber, and Grantee shall commence work at that time.

8 (8) All service for which a completion time is not otherwise specified in this
9 subsection (c) must be completed within five business days from the date work must commence
10 pursuant to paragraphs (5) through (7) above, unless, for reasons beyond the Grantee's control,
11 the work could not be completed in five business days even with the exercise of all due
12 diligence, in which case the Grantee shall complete the work in the shortest time possible.

13 [New in Chapter 9.2]

14 (d) A Grantee shall maintain records of service calls showing when and what
15 corrective action was completed.

16 [Formerly Sec. 9.1-7-6(e); new Sec. 9.2-9-3(d)]

17 (e) A Grantee shall arrange for pickup and/or replacement of Grantee equipment at
18 the subscriber's or former subscriber's address, or by a satisfactory equivalent (such as the
19 provision of a postage-prepaid mailer) if requested by a subscriber or former subscriber with a
20 disability that limits mobility.

21 [Formerly Sec. 9.1-7-6(f); new Sec. 9.2-9-3(e)]

1 **Section 9.2-9-4. Outages.**

2 (a) In the event that service to a subscriber is totally interrupted for more than 24
3 hours, then if the Grantee is reasonably able to identify the affected subscriber, the Grantee shall
4 provide the affected subscriber, whether or not the subscriber requests it, with a pro rata credit or
5 rebate of the subscriber's fees paid or payable (unless the Grantee's policy is to provide a greater
6 credit or rebate, in which case the credit or rebate with the greater benefit to the subscriber shall
7 have effect).

8 [Formerly Sec. 9.1-7-6(g); new Sec. 9.2-9-4]

9 (b) In the event of an unplanned outage of all channels lasting more than four hours
10 and affecting ten percent or more of a Grantee's total number of subscribers, a Grantee shall take
11 reasonable steps to keep subscribers and the Department informed of the outage and the
12 estimated time for restoring service. Such information may be provided via the Grantee's Web
13 site, social media, or other reasonable means. The Grantee's customer service representatives
14 shall be reasonably kept up to date with such information so that they can respond effectively to
15 subscriber calls.

16 [New in Chapter 9.2]

17 **Section 9.2-9-5. Complaint procedures.**

18 (a) A Grantee shall establish a clear procedure for resolving complaints. Complaints
19 may be made orally or in writing, at the complainant's option.

20 [Formerly Sec. 9.1-7-6(j); new Sec. 9.2-9-5(a)]

21 (b) A Grantee shall provide an initial response to a complaint within five days of its

1 receipt and a final written response within 30 days after a written complaint is received. The
2 response shall include a complaint number by which the complaint can be tracked. The final
3 written response shall include a notice stating that if the complaint has not been resolved to the
4 complainant's satisfaction, the matter may be referred to the Department.

5 [Formerly Sec. 9.1-7-6(k); new Sec. 9.2-9-5(b)]

6 **Section 9.2-9-6. Opt-out.**

7 If a Grantee offers subscribers or potential subscribers an opportunity to opt out of a term
8 or condition of service, the opt-out period shall not be less than 30 days, and the Grantee shall be
9 responsible for ensuring that the subscribers are given clear and evident notice that alerts a
10 reasonable subscriber to the nature of the option and its deadline.

11 [New in Chapter 9.2]

12 **Section 9.2-9-7. Terms of service.**

13 (a) If a Grantee changes the terms or conditions of service that bind subscribers, it
14 shall be responsible for ensuring that the subscribers are given written notice of such change,
15 indicating what provisions have changed. A general instruction to subscribers to consult the
16 Grantee's Web site periodically, for example, shall not constitute such notice.

17 [New in Chapter 9.2]

18 (b) A Grantee shall make available to a subscriber at any time complete written
19 copies of all agreements and terms of service to which the subscriber is subject, in such a way
20 that a reasonable subscriber can readily identify all the agreements and terms of service that
21 apply to that subscriber.

1 [New in Chapter 9.2]

2 **Section 9.2-9-8. Signal quality issues.**

3 If a subscriber experiences a signal problem documented by pictures or recordings that
4 have not been resolved by a Grantee by thirty days after the problem was first reported to the
5 Grantee, the County may require the Grantee to prove that the subscriber is consistently
6 receiving a signal that meets technical standards as defined in FCC regulations or other
7 applicable law.

8 [New in Chapter 9.2]

9 **Section 9.2-9-9. Subscriber rates and notice.**

10 (a) The County reserves the right to regulate all rates and charges except to the extent it
11 is prohibited from doing so by law.

12 (b) A Grantee shall maintain a publicly available schedule of all rates and charges for
13 all services offered over its cable system.

14 (c) A Grantee shall not implement an increase in rates or charges unless the Cable
15 Television Administrator and each subscriber subject to the increase in rates and charges has
16 been notified of the change in writing at least 60 days in advance of the change. In lieu of such
17 written notice, a Grantee may provide notification to subscribers in an alternative manner
18 approved by the Cable Television Administrator in each such case. In the event a cablecast
19 notice is approved by the Cable Television Administrator, a Grantee also shall give each
20 subscriber subject to the increase written notice of the increase no less than 30 days before the
21 increase is implemented.

1 (d) A Grantee shall notify each subscriber in writing of all applicable fees and
2 charges for providing cable service prior to executing a contract of service with such subscriber
3 or installing any equipment to serve such subscriber.

4 (e) Except as may be otherwise provided in a franchise agreement, a subscriber shall
5 have the right to have cable service terminated without charge. A subscriber or former
6 subscriber shall not be charged for cable service for more than two business days following the
7 notice of termination to the Grantee. No Grantee shall enter into any agreement with a
8 subscriber that imposes any charge for a time period after disconnection of service, except to the
9 extent an early termination fee may apply.

10 (f) A Grantee shall, at least 30 days prior to the date it intends to terminate service to
11 any subscriber, notify the subscriber in writing of such intention, the reason therefor and the date
12 termination is to be effective, except for reasons of public safety.

13 [Formerly Sec. 9.1-6-1(e); new Sec. 9.2-9-9]

14 (g) All Grantee promotional materials, announcements, and advertising of residential
15 cable service to subscribers and the general public that include price information shall clearly
16 and accurately disclose price terms. In the case of telephone orders, the Grantee shall take
17 appropriate steps to ensure that price terms are clearly and accurately disclosed to subscribers or
18 potential subscribers before the order is accepted. Such price terms shall include all taxes and
19 fees (to the extent the Grantee can determine the amount of the taxes and fees at the time of
20 order), surcharges, necessary equipment, and other charges that may result from the subscriber's
21 acceptance of the offered product. Services and equipment shall be described in promotions or

1 conversations in such a way that the subscriber or potential subscriber can readily identify the
2 corresponding line items on bills. Once the order has been completed, the Grantee shall
3 promptly, before the subscriber's next bill is generated, provide the subscriber with a complete
4 written description of the order as implemented by the Grantee, fully itemized and showing the
5 actual cost to the subscriber as it will be reflected on the Grantee's bills. Such written
6 description shall be provided in a way that allows the subscriber to confirm that the order is what
7 the subscriber intended.

8 [New in Chapter 9.2]

9 (h) Bills shall be clear, concise, and understandable, and shall not be such as to
10 mislead a reasonable subscriber as to any matter reflected on the bill. In particular, all line items
11 on a bill shall be explained on the bill in such a way that a reasonable subscriber can understand
12 the general nature of the charge or other entry without reference to information outside the bill.

13 (1) All descriptions in the bill shall be correct, truthful, and not misleading.

14 (2) The bill shall clearly delineate all activity during the billing period,
15 including but not limited to optional charges, rebates, credits, and late charges.

16 (3) Bills shall be fully itemized, with itemizations including but not limited to
17 basic and premium service charges and equipment charges.

18 (4) A Grantee may itemize charges that a subscriber must pay in connection
19 with a service or item of equipment as permitted by applicable law, as long as such included
20 charges are not represented in such a way as to mislead the subscriber as to the full cost of the
21 service or equipment.

1 (5) A Grantee may itemize line items relating to costs imposed by
2 governmental entities or pursuant to a franchise agreement, including but not limited to those
3 specified in 47 U.S.C. § 542(c), as permitted by applicable law, as long as such included charges
4 are not represented in such a way as to mislead the subscriber as to the full amount the Grantee
5 charges the subscriber.

6 [New in Chapter 9.2]

7 **Section 9.2-9-10. Placement of equipment.**

8 If requested by a property owner and to the extent practicable, a Grantee shall take into
9 consideration the property owner’s preferences as to the location of the Grantee’s above-ground
10 pedestals or other above-ground equipment placed on private property. A Grantee may require a
11 property owner to pay the cost of any request by the property owner to move an existing pedestal
12 or other above-ground equipment, and the Grantee shall provide the property owner with an
13 estimate of such cost at the property owner’s request.

14 [New in Chapter 9.2]

15 **Section 9.2-9-11. Protection of subscriber privacy.**

16 (a) A Grantee shall at all times protect the privacy rights of all subscribers and former
17 subscribers in accordance with applicable law, including but not limited to those rights secured
18 by 47 U.S.C. § 551.

19 (b) A subscriber or former subscriber may at any time revoke any written or
20 electronic consent to release information by delivering to a Grantee in writing, by mail, or
21 otherwise, the subscriber's or former subscriber’s decision to revoke the authorization. Any such

1 revocation shall be effective upon receipt by the Grantee. Any subscriber's prior written or
2 electronic consent to release information shall be revoked upon termination of a Grantee's
3 service to that subscriber.

4 [Formerly Sec. 9.1-7-9; new Sec. 9.2-9-11]

5 **Section 9.2-9-12. Methodology for standards.**

6 A Grantee shall, upon the County's request, disclose the Grantee's methodology for
7 calculating and determining compliance with each standard in this ARTICLE 9. Upon the
8 County's request, the Grantee shall also provide a calculation based on a common methodology
9 specified by the County for all Grantees. A Grantee shall not calculate its performance with
10 respect to any such standard in a way that has the purpose or effect of evading applicable
11 standards or obscuring Grantee's actual performance.

12 [New in Chapter 9.2]

1 name, service mark, or patent; failure by a Grantee to secure consents from the owners or
2 authorized distributors of programs to be delivered by a Grantee's cable system; invasion of the
3 right of privacy; or defamation of any person, firm or corporation.

4 (d) Grantee's obligations specified in subsections (a) through (c) shall not apply if the
5 specific act or omission that gives rise to the claim has been authorized by indemnitees. A
6 general statement of authorization pursuant to this Chapter or a franchise agreement shall not be
7 construed to be such an authorization.

8 (e) Grantee's obligations specified in subsections (a) through (c) shall not apply if the
9 events that give rise to the claim are the direct result of any act or omission by indemnitees that
10 results in personal injury or property damage.

11 (f) This indemnity does not apply to PEG programming to the extent it is provided by
12 a person other than a Grantee or its agent, or programming carried on channels leased pursuant to
13 47 U.S.C. § 532, or any content on the I-Net.

14 (g) The County shall provide a Grantee with timely written notice, sufficient to allow
15 the Grantee to respond, of any obligation to indemnify and defend the County. The County shall
16 take action to avoid entry of a default judgment. The County will reasonably cooperate with the
17 Grantee in the Grantee's defense of such a claim or action.

18 (h) In the event that a Grantee fails, after notice, to undertake indemnitees' defense
19 pursuant to this Section, a Grantee's indemnification shall include, but is not limited to,
20 indemnitees' reasonable attorneys' fees incurred in such defense, any associated interest charges,
21 indemnitees' out-of-pocket expenses, and the reasonable value of any services rendered by the
22 County Attorney or other County staff.

1 (i) Neither the provisions of this Section nor any damages recovered by indemnitees
2 shall be construed to limit the liability of a Grantee or its agents for damages under this Chapter
3 or its franchise agreement or to excuse the faithful performance of obligations required by this
4 Chapter and its franchise agreement, except to the extent that any monetary damages suffered by
5 indemnitees have been satisfied by a financial recovery under this Section or other provisions of
6 this Chapter or the franchise agreement.

7 (j) Indemnitees shall at no time be liable for any injury or damage occurring to any
8 person or property from any acts or omissions of a Grantee in the construction, maintenance, use,
9 operation, or condition of a Grantee's cable system. Indemnitees shall not and do not assume any
10 liability whatsoever of a Grantee for injury to persons or damage to property.

11 [Formerly Sec. 9.1-5-9; new Sec. 9.2-10-2]

12 **Section 9.2-10-3. Security Instruments.**

13 (a) A Grantee shall obtain and maintain during the entire term of a franchise, and any
14 renewal or extensions thereof, a performance bond in the County's favor in the amount provided
15 in its franchise agreement to ensure a Grantee's faithful performance of its obligations under its
16 franchise agreement, this Chapter, and other applicable law. The County may, at its sole
17 discretion, reduce the amount of the bond upon written application by a Grantee. Reductions
18 granted or denied upon application by a Grantee shall be without prejudice to the Grantee's
19 subsequent applications or to the County's right to require the full bond at any time thereafter.
20 However, no application for a reduction of bond shall be submitted by a Grantee within one year
21 of any prior application. In no event shall such performance bond or bonds be reduced to less
22 than fifty thousand dollars.

1 (b) No Grantee shall permit any insurance policy or performance bond to expire or
2 approach less than 30 days prior to expiration without securing and delivering to the County a
3 substitute, renewal, or replacement policy or bond in conformance with the provisions of this
4 Chapter.

5 (c) The County may require performance bonds described in this Section to run to the
6 benefit of the County.

7 (d) The following procedures shall apply to drawing on any bond or letter of credit
8 provided by a Grantee:

9 (1) If the County notifies a Grantee of any amounts due pursuant to its
10 franchise agreement or applicable law, and the Grantee does not make such payment within 30
11 business days, the County may draw the amount in question, with any applicable interest and
12 penalties, from the bond or letter of credit after providing written notice to the Grantee and the
13 issuing financial institution, specifying the amount and purpose of such draw.

14 (2) Within three business days of a draw on the bond or letter of credit, the
15 County shall mail to the Grantee, by certified mail, return receipt requested, written notification
16 of the amount, date, and purpose of such draw.

17 (3) If at the time of a draw on the bond or letter of credit by the County, the
18 amount available is insufficient to provide the total payment of the claim asserted in the
19 County's draw notice, the balance of such claim shall not be discharged or waived, but the
20 County may continue to assert the same as an obligation of the Grantee to the County.

21 (4) No later than 30 days after the County mails notice to the Grantee by
22 certified mail, return receipt requested, of a draw on the bond or letter of credit, the Grantee shall

1 restore the amount of the bond or letter of credit to its original amount as specified in the
2 franchise agreement. However, if the Grantee has initiated a legal action contesting the alleged
3 default or amount owed, the County shall not further draw on the bond or letter of credit for the
4 issue disputed in the legal action or subsequent cases arising out of the same facts and
5 circumstances, pending final resolution. The County may, however, continue to draw on the
6 bond or letter of credit for other violations.

7 (5) Upon termination of the Grantee's franchise and satisfaction of all its
8 outstanding obligations under the franchise and applicable law, the bond may be canceled by the
9 Grantee and the County shall release the issuing bank of its obligations under the letter of credit,
10 provided that there is then no outstanding default on the part of the Grantee. Upon renewal of
11 the franchise, the bond and letter of credit may be canceled and replaced, as applicable, by any
12 similar instrument that may be required upon such renewal.

13 [Formerly Sec. 9.1-5-9; new Sec. 9.2-10-3]

14 **Section 9.2-10-4. Remedies.**

15 Violation of this Chapter shall be subject to such remedies as shall be prescribed by
16 federal, state, or local law, or by franchise agreement.

17 [Formerly Sec. 9.1-9-9; new Sec. 9.2-10-2]

18 **Section 9.2-10-5. Force majeure.**

19 Notwithstanding any other provision of this Chapter, a Grantee shall not be liable for
20 delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this
21 Chapter due, directly or indirectly, to force majeure as defined in the Grantee's franchise

1 agreement. In the event that any such delay in performance or failure to perform affects only
2 part of a Grantee's capacity to perform, the Grantee shall perform to the maximum extent it is
3 able to perform and shall take all reasonable steps within its power to correct such cause(s) in as
4 expeditious a manner as possible.

5 [New in Chapter 9.2]

6 **Section 9.2-10-6. Franchise revocation.**

7 (a) The Board shall have the right, by ordinance, to revoke a franchise or to shorten
8 the term of a franchise to a term not less than 36 months from the date of the action shortening
9 the franchise term, for a Grantee's failure to construct, operate, or maintain its cable system in
10 accordance with this Chapter and its franchise agreement; for failing to comply with the
11 conditions of occupancy for any public lands; for failing to make required extensions of service;
12 for willfully or knowingly making false statements on or in connection with an initial or renewal
13 franchise application; for willfully or knowingly making false statements on or in connection
14 with any application for a transfer or a franchise modification; for defrauding or attempting to
15 defraud the County or subscribers; for any substantial violation of the Virginia Consumer
16 Protection Act of 1977; for any substantial violation of the Cable Act or any regulations
17 promulgated pursuant thereto; or for any other material breach of a franchise agreement or
18 violation of this Chapter. Board actions pursuant to this Subsection shall be taken in accordance
19 with any other terms or conditions regarding revocation or shortening of the term that may be
20 established in that Grantee's franchise agreement.

21 (b) A Grantee shall not be subject to the sanctions of this Section for any act or
22 omission caused by force majeure as defined in the Grantee's franchise agreement.

1 (c) Any franchise shall be deemed revoked 120 days after an assignment for the
2 benefit of creditors or the appointment of a receiver or trustee to take over the business of a
3 Grantee, whether in a receivership, reorganization, bankruptcy, assignment for the benefit of
4 creditors, or other action or proceeding. However, a Franchise may be reinstated at the Board's
5 sole discretion if, within that 120 day period:

6 (1) Such assignment, receivership, or trusteeship has been vacated; or

7 (2) Such assignee, receiver, or trustee has fully complied with the terms and
8 conditions of this Chapter and the applicable franchise agreement and has executed an
9 agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to
10 be bound by the terms and conditions of this Chapter and the applicable franchise agreement, and
11 such other conditions as may be established or as are required by applicable law; or

12 (3) If the Board determines that reinstatement is in the public interest for other
13 reasons.

14 (d) Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of
15 any of the facilities, equipment, or property of a Grantee, the Board may revoke the franchise by
16 serving notice on the Grantee and the successful bidder, in which event the franchise and all
17 rights and privileges of the franchise will be revoked and will terminate on a date established by
18 the Board, but not less than 30 days after serving such notice, unless:

19 (1) The Board has approved the transfer of the franchise to the successful
20 bidder; and

21 (2) The successful bidder has covenanted and agreed with the Board to
22 assume and be bound by the terms and conditions of the franchise agreement and this Chapter,

1 and such other conditions as may be established or as are required pursuant to this Chapter or a
2 franchise agreement.

3 (e) If the Board revokes a franchise, or if for any reason not constituting force
4 majeure a Grantee terminates service to its subscribers, or fails to provide service to all its
5 subscribers for 72 consecutive hours, abandons its system, or fails to operate its system, the
6 following rights are effective:

7 (1) the Board may acquire ownership of or effect a transfer of the cable
8 system at an equitable price, subject to applicable provisions of the Grantee's franchise
9 agreement and applicable law; and

10 (2) if a cable system is abandoned by a Grantee, the Board may sell, assign or
11 transfer all or part of the assets of the system, subject to applicable provisions of the Grantee's
12 franchise agreement and applicable law.

13 (f) The termination of a Grantee's franchise shall in no way affect the validity of any
14 act or violation done or committed before that termination; or any liquidated damage, penalty,
15 sanction, or forfeiture incurred, or any right established, accrued, or accruing under the franchise
16 before that termination; or any notice of violation or enforcement action initiated pursuant to the
17 franchise before that termination.

18 [Formerly Sec. 9.1-5-4; new Sec. 9.2-10-4]

19 **Section 9.2-10-7. Termination of Franchise.**

20 Upon termination of a franchise, by action of the Board, a Grantee shall cease using its
21 system for the purposes authorized by the franchise except to the extent required by Section 9.2-
22 3-5.

1 [Formerly Sec. 9.1-5-12; new Sec. 9.2-10-5]

2 **Section 9.2-10-8. Transfer of ownership to County.**

3 (a) If the County has the right under applicable law and the Grantee's franchise
4 agreement to acquire ownership of a Grantee's cable system or substantially all of its assets, and
5 the County and the Grantee agree upon the price pursuant to this Chapter, then the County shall
6 give written notice to the Grantee whether it elects to exercise such right. The County shall give
7 such notice within 60 days after agreement on the price, unless the County and the Grantee agree
8 to a different time period. The County's written notice shall indicate whether the entire system
9 or substantially all of Grantee's assets will be purchased. Ownership of the system or the
10 identified assets will transfer to the County at the time the County tenders the purchase price for
11 the system or assets, which shall not be later than 180 days after the County's notice of its
12 exercise of a right of purchase, unless the County and the Grantee agree to a different time
13 period.

14 (b) In the event the Board elects to purchase or transfer a Grantee's cable system, or
15 any of its assets, pursuant to the terms of a franchise agreement and/or this Chapter, and the price
16 cannot be agreed upon, the price shall be determined by a panel of arbitrators. The panel shall be
17 composed of one arbitrator chosen by the County, one arbitrator chosen by the Grantee, and a
18 third arbitrator chosen by the first two. The expenses of the arbitration, including the fees of the
19 arbitrators, shall be borne by the parties in such a manner as the arbitrators provide in their
20 award, but in no event will the County be responsible for more than one-half of the expenses.
21 The arbitrators shall follow the rules and procedures of the American Arbitration Association,
22 except where such procedures conflict with an express provision of this Chapter. The arbitration

1 hearing shall take place in Fairfax County, Virginia, unless otherwise agreed to by the parties in
2 writing.

3 (c) Where the purchase price of a cable system has been submitted to arbitration, the
4 County may accept the price determined by the arbitrators within 60 days after the rendering of the
5 arbitrators' decision, and make payment of such price in full to the Grantee within 180 days after
6 the rendering of the arbitrators' price, in which case the system or any assets shall be transferred to
7 the County. If the County fails to accept the arbitrators' price within the aforesaid 60-day period
8 and tender the purchase price in full to the Grantee within 180 days after the rendering of the
9 arbitrators' price, the right of the County to acquire shall expire.

10 (d) No matter or dispute between the County and a Grantee relating to this Chapter or
11 a franchise agreement shall be arbitrable unless specifically provided for in this Chapter or a
12 franchise agreement.

13

14 [Formerly Sec. 9.1-5-5; new Sec. 9.2-10-6]

1 **Section 9.2-11-3. Fee in lieu of franchise fee.**

2 An open video system operator shall pay to the County a fee of five percent of gross
3 revenues in lieu of a franchise fee, unless cable service provided by the open video system
4 operator is subject to the Virginia Communications Sales and Use Tax levied under Virginia
5 Code § 58.1-648 or any successor provision, in which case the open video system operator shall
6 be responsible for such Communications Sales and Use Tax in lieu of a franchise fee.

7 [Formerly Sec. 9.1-8-3; new Sec. 9.2-11-3]

8 **Section 9.2-11-4. Public, educational, and governmental access obligations.**

9 An open video system operator shall be subject to obligations pertaining to public,
10 educational, and governmental access pursuant to 47 C.F.R. § 76.1505.

11 [Formerly Sec. 9.1-8-4; new Sec. 9.2-11-4]

12 **Section 9.2-11-5. Usage of public ways.**

13 (a) An open video system operator shall be subject to all requirements of state and
14 local law regarding authorization to use or occupy the public ways, except to the extent
15 specifically prohibited by federal law. FCC approval of an open video system operator's
16 certification pursuant to 47 U.S.C. § 573 shall not confer upon such operator any authority to use
17 or occupy the public ways that the operator would not otherwise possess.

18 (b) No person shall construct, install, maintain, or operate an open video system or
19 part of an open video system on, over, through, or within a public way in the County, or on, over,
20 through, or within any other public property of the County, unless an agreement has first been

1 obtained pursuant to the provisions of this Article, and unless such open video system agreement
2 is in full force and effect.

3 [Formerly Sec. 9.1-8-5; new Sec. 9.2-11-5]

1 other regulatory agencies, and, at the Cable Television Administrator's discretion, requiring the
2 preparation and filing of information in addition to that otherwise required by this Chapter or
3 applicable law pursuant to Section 9.2-8-1 of this Chapter;

4 (6) Monitoring a Grantee's performance under and compliance with the terms
5 of an applicable franchise agreement and this Chapter and making recommendations to the
6 Board to ensure such compliance or advising and making recommendations on matters that may
7 constitute grounds for revoking or shortening the term of a Franchise;

8 (7) Receiving and investigating complaints against a Grantee and advising a
9 Grantee of the receipt of subscriber complaints affecting a Grantee's system;

10 (8) Seeking recovery of liquidated damages provided for in a franchise
11 agreement, including but not limited to withdrawing money from security instruments pursuant
12 to a franchise agreement;

13 (9) Advising the Board with regard to the County's authority to regulate,
14 franchise, or authorize cable and other communications systems in the County;

15 (10) Developing policies to encourage growth and competition in
16 communications, and evaluating the impact of cable and other communications systems on the
17 County, for review and implementation by the Board;

18 (11) Executing agreements with Grantees and other third parties as appropriate
19 to (A) establish safeguards, subject to the requirements of the Virginia Freedom of Information
20 Act, Virginia Code § 2.2-3700, et seq., and the disclosure requirements of any other applicable
21 law, to protect proprietary and confidential documents that Grantees provide pursuant to this
22 Chapter or a cable franchise; and (B) toll the running of statutes of limitation, contractual

1 limitations periods, or other deadlines when doing so will protect the County’s rights and
2 interests under this Chapter or a cable franchise agreement; and

3 (12) Other duties as assigned by the Board and the County Executive.

4 (c) The Board shall have the sole authority to: (i) grant franchises; (ii) authorize the
5 entering into of franchise agreements; (iii) renew franchises; (iv) revoke or shorten the term of a
6 franchise; (v) modify a franchise; and (vi) authorize the transfer of a franchise.

7 [Formerly Sec. 9.1-4-1; new Sec. 9.2-12-1]

8 **Section 9.2-12-2. Advisory bodies to the Board of Supervisors.**

9 The Consumer Protection Commission (as defined in Chapter 10, Article 3 of the Code of
10 the County of Fairfax) may, as directed by the Board or requested by the Cable Television
11 Administrator, advise and inform the Board on issues relating to cable systems.

12 [Formerly Sec. 9.1-4-2; new Sec. 9.2-12-2]

1 **Section 9.2-13-3. Failure to enforce franchise.**

2 A Grantee shall not be excused from complying with any of the terms and conditions of
3 this Chapter or its franchise by any failure of the County, upon any one or more occasions, to
4 insist upon a Grantee's performance or to seek a Grantee's compliance with any one or more of
5 such terms or conditions.

6 [Formerly Sec. 9.1-9-4; new Sec. 9.2-13-3]

7 **Section 9.2-13-4. Rights reserved to the County.**

8 The County hereby expressly reserves the following rights:

9 1. To exercise its governmental powers, now or hereafter, to the full extent that such
10 powers may be vested in or granted to the County.

11 2. To adopt, in addition to the provisions contained herein, in a franchise agreement
12 and in ordinances, such additional regulations as it shall find necessary in the exercise of its
13 police power.

14 3. The right to amend this Chapter.

15 [Formerly Sec. 9.1-9-5; new Sec. 9.2-13-4]

16 **Section 9.2-13-5. Employment requirement.**

17 A Grantee shall adhere to the Equal Employment Opportunity regulations of the FCC and
18 to all federal, state, and local laws and executive orders pertaining to discrimination, equal
19 employment opportunity, and affirmative action that are applicable to a Grantee.

20 [Formerly Sec. 9.1-9-6; new Sec. 9.2-13-5]

1 **Section 9.2-13-6. Time of essence.**

2 (a) Whenever this Chapter or a franchise agreement sets forth any time for any act to
3 be performed by or on the behalf of a Grantee, such time shall be deemed of the essence and the
4 Grantee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for
5 the County to invoke the remedies available under the terms and conditions of this Chapter and
6 its franchise agreement.

7 (b) Unless otherwise indicated, when the performance or doing of any act, duty,
8 matter, or payment is required under this Chapter or any franchise agreement, and a period of
9 time or duration for the fulfillment of doing thereof is prescribed and is fixed herein or in a
10 franchise agreement, the time shall be computed so as to exclude the first and include the last day
11 of the prescribed or fixed period of time.

12 [Formerly Sec. 9.1-9-7; new Sec. 9.2-13-6]

13 **Section 9.2-13-7. Preemption.**

14 In the event that federal or state laws, rules, or regulations preempt a provision or limit
15 the enforceability of a provision of this Chapter, then the provision shall be read to be preempted
16 to the extent and for the time, but only to the extent and for the time, required by law. In the
17 event such federal or state law, rule, or regulation is subsequently repealed, rescinded, amended,
18 or otherwise changed so that the provision herein that had been preempted is no longer
19 preempted, such provision shall thereupon return to full force and effect, and shall thereafter be
20 binding on all Grantees, without the requirement of further action on the part of the County.

21 [Formerly Sec. 9.1-9-11; new Sec. 9.2-13-7]

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2. That Chapter 9.1 of the Fairfax County Code is repealed, except as set forth in enactment clause 3 below.

3. The repeal of Chapter 9.1 shall not affect the validity of any act or violation done or committed before the repeal of that Chapter; or any liquidated damage, penalty, sanction, or forfeiture incurred, or any right established, accrued, or accruing, under that Chapter before the repeal; or any notice of violation or enforcement action initiated pursuant to that Chapter before the repeal. Any such acts, violations, liquidated damages, penalties, sanctions, forfeitures, rights, or enforcement actions shall be governed by Chapter 9.1, which is continued in effect for that purpose.

4. With respect to occurrences after the repeal of Chapter 9.1, any references to Chapter 9.1 in cable franchise agreements shall be construed to refer to the corresponding provisions of Chapter 9.2.

5. That this ordinance shall become effective on January 1, 2020.

GIVEN under my hand this ____ day of _____, 2019.

Jill G. Cooper

Clerk for the Board of Supervisors